IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5974 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

KASHMIRABEN YOGESHKUMAR POPAT

Versus

VAJIRKHAN BAVALKHAN PATHAN

Appearance:

MR H.S.MULIA for Appellant &
MR HA SEJPAL for Appellant
NOTICE SERVED for Respondent No. 1-2
MS LILU K BHAYA for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 06/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Miss Lilu K. Bhaya appears and waives service of notice in appeal for respondent no.3 Insurance Company.

2. On a joint request of learned counsel, this appeal is taken up for hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988 by the original claimants who had filed a claim for compensation arising from a vehicular accident before the Motor Accident Claims Tribunal (Aux.) at Ahmedabad, being Motor Accident Claim Petition No.567/97. The Tribunal, after appreciating the evidence on record, came to the conclusion that the datum figure of income for the purpose of computing the loss of dependency and/or loss to the estate would come to Rs.2,50,000/-. From this figure a sum of Rs.80,000/- has been deducted on account of personal expenditure which the deceased would have incurred, leaving a net figure of Rs.1,70,000/-. The Tribunal has then applied a multiplier of 8 to this figure of Rs.1,70,000/- and has arrived at a figure of Rs.13,60,000/- under this head. Out of this figure, the Tribunal deducted 20% on account of negligence of the deceased himself, who was the driver of the car involved in the accident, and whose heirs had preferred the said claim petition. Thus, after deduction of the said 20%, the amount of compensation comes to Rs.10,88,000/-. A further amount of Rs.10000/- has been awarded to the claimant no.1 being the widow of the deceased under the head of loss of consortium. A further amount of Rs.10000/- has been awarded under the head of loss of expectation of life and an amount of Rs.4000/- under the head of obsequial ceremony, transportation of the body, etc.

4. We have carefully perused the impugned judgement and have referred to such evidentiary material on record to which our attention has been drawn. As a result of the hearing and discussion, learned counsel for the appellants-original claimants ultimately pressed the appeal only on the ground that the multiplier of 8 applied by the Tribunal to the net income of the deceased (for the purpose of computation of the dependency benefit) is very much on the lower side, and the same requires to be enhanced. In the context of this limited controversy, learned counsel for the respondent Insurance Company submitted that if a multiplier of 14 is applied,

the same would meet the ends of justice. It requires to be noted that the age of the deceased as established from the evidence on record has been found to be 36 years. This finding is not disputed by either of the parties. We are, therefore, required to consider the appropriate multiplier which would apply to the computation of net annual income for the purpose of determining the compensation. In the context of the present facts, we are of the opinion that the multiplier of 14 would be just and appropriate and would meet the ends of justice. We, therefore, hold and direct that the multiplier of 14 (instead of 8 as found by the Tribunal) shall be applied to the net annual income of Rs.1,70,000/- for the purpose of computation of dependency benefit. This would bring the figure to the compensation under this head to Rs.23,80,000/-. Out of this amount 20% is required to be deducted on account of negligence of the deceased himself, i.e. Rs.4,76,000/-. Thus, after this deduction, the compensation payable under this head would come to Rs.19,04,000/-.

5. So far as grant of compensation under the other heads viz. Rs.10000/- in respect of loss of consortium, Rs.10000/- under the head of loss of expectation of life, and Rs.4000/- under the head of obsequies ceremony and transportation of the body, etc. is concerned, we are of the opinion that the same does not require any interference, and in any case, learned counsel for the appellants does not press for enhancement under these heads.

6. We are conscious that the additional amount of compensation which the appellants would be entitled to get under the present judgement is on account of this adjudication today, where we are bound to take note that rates of interest have been consistently dropping since a number of years. Thus, in this context, the rate of interest which ought to apply to this additional amount of compensation determined by us ought to be at a far lower rate than that awarded by the Tribunal. We, therefore, hold that the additional amount of compensation determined by us shall bear interest at the rate of 6% per annum from the date of the claim petition till realisation.

7. Thus, the impugned award is modified only to the aforesaid extent, and consequently the appeal is partly allowed with no order as to costs. Decree accordingly. Direct service is permitted.

****

ar